Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. [redacted] 116

DOUGLAS McCRARY and M. M. BRATTON et al.,
Petitioners,

v.

ALADDIN RADIO INDUSTRIES, INC., and
ALADDIN INDUSTRIES, INC.,
Respondents.

MEMORANDUM REPLY BRIEF

In Support of Petition for Writs of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 976.

DOUGLAS McCRARY and M. M. BRATTON et al.,
Petitioners,

v.

ALADDIN RADIO INDUSTRIES, INC., and
ALADDIN INDUSTRIES, INC.,
Respondents.

MEMORANDUM REPLY BRIEF

In Support of Petition for Writs of Certiorari.

Petitioners respectfully request that the following reply be filed to the "Memorandum of Respondents in Answer to Petition for Writs of Certiorari":

I.

The petition filed herein did not discuss the question of whether, by the law of Tennessee, petitioners may be in contempt of a void injunction. No such issue has been raised; respondents cannot avail of any such issue at this late hour.

The injunction for which petitioners have been held in contempt was issued without jurisdiction of the Tennessee Chancellor over the subject matter. **Teamsters' Union v. Kerrigan Iron Works, Inc.**, ... U. S. ..., 77 S. Ct 1055 (1957); see, also, cases cited in Petition herein.

By the established law of Tennessee, an injunction so issued without jurisdiction of the subject matter is void,[1] its violation is not a contempt, and the injunction may be attacked collaterally:

> "If the attack is successful, the fiat was utterly void for want of jurisdiction of the judge awarding it and disobedience of the injunction is not a contempt. Howell v. Thompson, 130 Tenn. 311, 170 S. W. 253; 12 Am. Jur. 408, Sec. 26;[2] 17 C. J. S., Contempt, Sec. 14, p. 19; Gibson's Suits in Chancery, Art. 814, note 43.
>
> "A void Judgment is no judgment at all and binds nobody."
>
> **Churchwell v. Callens**, 252 S. W. 2d 131, at 133.

Direct appeal lies from a judgment of contempt of such a void order in Tennessee. That procedure has been ex-

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[1] Cf. *Oliver v. Local or Subordinate Lodge No. 656, Etc.*, 182 Tenn. 236, 185 S. W. 2d 525.

[2] The principle followed by the Courts of Tennessee and cited by the Tennessee Court from *12 Am. Jur. 408*, reads, to the extent applicable:

> ". . . The only legitimate inquiry in a contempt proceeding, based upon the violation of an injunction, is whether the court granting it had jurisdiction of the parties and of the subject matter; the question whether the order was erroneous will not be considered. If the court had the jurisdiction required, the fact that its power was erroneously exercised does not render the injunction void, but only voidable on proper application; and, until set aside or revoked, it is entitled to implicit obedience. *Where, however, the court in granting the injunction acted without jurisdiction, a violation of the order which it assumed to make does not constitute contempt; no one is bound to obey such a decree and the court making it has no power to punish a disobedience thereof.* . . ." (Emphasis supplied.)

pressly recognized by the Court of Appeals of Tennessee as the law of the present cases. In denying certiorari to review the Chancellor's assertion of jurisdiction at an early stage of these proceedings, the Court of Appeals of Tennessee held them to be within the Chancery Court's jurisdiction, and added:

> "But if this conclusion is erroneous, and if the Chancellor did not have jurisdiction to grant the injunction or enter the order complained of, it does not follow that petitioners are entitled to writs of certiorari and supersedeas. To entitle them to such writs, not only must the lower court have acted outside or in excess of its jurisdiction but also there must be no other, plain, speedy or adequate remedy.
>
> "It appears that petitioners have another plain, speedy and adequate remedy. **If a judgment should be entered against them in this ancillary contempt proceeding, such judgment would be final and appealable as of right, even though the principal case is still pending.** B. F. Steif Jewelry Co. v. Walker, 36 Tenn. App. 427, 256 S. W. (2d) 392.
>
> "Having this remedy of appeal, petitioners are not entitled to the writs of certiorari and supersedeas . . . . " (Emphasis supplied.)
>
> **Aladdin Radio Industries, Inc., v. Adkins Transfer Co.**, 28 Labor Cases 69, 387 at p. 89,569. (See entire Opinion set out in Appendix G, page 52, Petition herein.)

Indeed, in the proceedings below, respondents have never suggested that the law of Tennessee is otherwise.[3] Respondents' briefs and arguments to the Court of Ap-

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[3] *Nashville Corporation v. United Steelworkers of America*, 187 Tenn. 440, 215 S. W. (2d) 818, does not relate to a void injunction issued without jurisdiction of the subject matter. The opinion deals with the necessity of obeying irregular or erroneous—as distinguished from void—judgments. Gibson's authoritative "Suits in

peals of Tennessee, and to the Supreme Court of Tennessee in opposition to certiorari from that Court, were prepared by eminently able practitioners at the Tennessee bar. They did not contain a single word of suggestion that petitioners would be in contempt even if the injunction were to be found void for want of jurisdiction of the subject matter. Those briefs and arguments did not contain a single citation of the **United Mine Workers'** case (330 U. S. 258), or a single reference to principles that case may make applicable in Federal courts. On the contrary, those briefs and arguments, in the main, were directed to support of the Chancellor's jurisdiction. That was the major issue below—an issue completely resolved against respondents by **Kerrigan.** Respondents' unsupported suggestion, now, that the doctrine of the **United**

Chancery," 5th ed., by which Tennessee Courts are guided, thus declares the Tennessee law:

"As to the efficacy and probative force, judgments and decrees are of three sorts:

"1. *Valid Judgments and Decrees*, being those based on jurisdiction of both the subject matter and the person, and justified by the pleadings and proofs, or the consent of the parties; they are proof against direct attacks by appeals or writ of error, or by bill in Chancery, and, of course, also, against collateral attacks.

"2. *Voidable Judgments and Decrees*, being those which are valid on their face, and, therefore, proof against collateral attack, but are reversible on direct attack by appeal or writ of error, or by bill in Chancery.

"3. *Void Judgments and Decrees*, being those that appear on the face of the record itself to have been rendered without jurisdiction of the parties or the subject matter, or without being justified by the pleadings, or the consent of parties. *Void judgments have no efficacy or probative force, and yield to collateral attack.*" (Emphasis supplied.) Art. 454, at p. 518.

"* * * There is a wide difference between a void judgment and a voidable judgment. See, ante, Arts. 454, 607. *A void judgment binds nobody; it bars nobody; it is a nullity; and no judgment at all; and justifies no act done under it.* Holmes v. Eason, 76 Tenn. 754, 760; Finley v. Gaut, 67 Tenn. 148, 151. A voidable judgment, however, binds everybody, and justifies every act done under it, until reversed or set aside." Footnote 50, Art. 860, at p. 63. (Emphasis supplied.)

Mine Workers' case is somehow involved, comes not only late, but frivolously.[4]

Tennessee's law governs the disposition of the judgments of contempt; it differs materially from Respondents' characterization of **United Mine Workers.**

The law of Tennessee, recognized by all parties below and by all courts below, is clear:

> "If the Court is without jurisdiction of the subject-matter in which it is undertaking to proceed, its orders are void. **An injunction made in respect to a subject-matter beyond the jurisdiction of the Court is a mere nullity, and is binding on no one"** (emphasis supplied).
>
> **Howell v. Thompson,** 170 S. W. 253, 256.

The judgments of contempt against petitioners, based upon void injunctions, therefore, cannot stand and should

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[4] The brief of Respondents in the Tennessee Supreme Court expressly recognizes the right of collateral attack on a void injunction, stating:

"Propositions of Law.

"1. The injunction granted in this case was valid on its face and was within the traditional and customary jurisdiction of the chancery court. *Unless the contrary is clearly shown,* it is to be assumed that the court had jurisdiction and that the injunction was properly issued. This is particularly true *in the present case where a collateral attack is being made on the jurisdiction of the court by parties who wilfully violated the injunction. The burden of showing invalidity is on those convicted of contempt.*" (Emphasis supplied.)

Nashville Corporation v. United Steelworkers, 187 Tenn. 444, 215 S. W. 2d 818.

That brief also explains:

". . . The only possible question remaining for this Court to consider on petition for certiorari is whether or not the injunction which the appellants were conclusively found to have violated was void for lack of jurisdiction." *Reply Brief and Argument on Behalf of Aladdin Industries, Inc.,* In the Supreme Court of Tennessee, pp. 4 and 3.

Petitioners have readily assumed *and* have completely discharged the burden of establishing that lack.

be reversed by this Court. **Amalgamated Association, etc., v. Wisconsin Employ. Rel. Bd.**, 340 U. S. 387, 71 S. Ct. 359.

II.

The present case and the **Kerrigan** case are substantially identical. The same Local 327 and its members, and the same collective bargaining provisions insuring the right to respect peaceful picket lines, are involved in both cases. In both there has been the same invasion by the State Chancellor of an area pre-empted by Congress.

The same Tennessee Chancellor issued the challenged orders in both cases, under the identical misconception in both that (by enforcement of a Tennessee policy applicable to common carriers) he could forbid, or impose punishment for, peaceful picketing in an interstate industry.

On appeal **Kerrigan** and the present case were treated alike by the Court of Appeals of Tennessee.

Finally, in this Court, there is little difference of form or substance between the questions presented by the petition in **Kerrigan** and those raised by the petition here. Both sets of questions challenged the jurisdiction of the Tennessee Chancellor to interfere with peaceful picketing of an interstate industry by his reliance upon Tennessee law governing the obligations of common carriers. In **Kerrigan**, his interference was by injunction. Here, there has been a similar injunction (running against substantially the same parties) plus enforcement by judgments of contempt. Respondents incorrectly read the record in suggesting that **Kerrigan** involved an injunction against the Union while the present case does not. Even if the presence of the Union in the suits were governing, the short answer is: In the present case the Union has been held in contempt of the injunction, and, thus, has been enjoined to an actually more damaging extent than in **Kerrigan**. The doctrine of Federal pre-emption is, a fortiori, the more violated by enforcement of the Chan-

cellor's decree than by its mere issuance. And, in fact, the Court of Appeals of Tennessee pointedly treated the Union here as subject to the injunctions, as an agent of the named defendants with knowledge of their terms, just as if the Union had been named in the complaints. The following virtually identical and summarizing language appears in the opinions of that Tennessee Court in **Kerrigan**, and in the present cases:

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"The only conduct complained of is the conduct of the carriers in not rendering the service and the conduct of appellants in interfering to prevent such service."	"The only conduct complained of by the suit is the conduct of the carriers in not rendering their service, and the conduct of appellants in interfering to prevent each service."

(See Appendix hereto, p. .....)

The almost exact identity of **Kerrigan** to the present case is highlighted by Appendix "A" hereto. That Appendix sets out parallel considerations in the respective opinions of the Court of Appeals of Tennessee.

Challenged action of the Chancellor in both cases conflicts with pre-emptive Federal legislation. Neither action can stand.

III.

The decision of this Court in **Kerrigan** is conclusively precise support for granting of the writs. It likewise, we respectfully submit, justifies summary disposition of these cases. The respondents in **Kerrigan** could not successfully rely upon the suggested distinction that the business of common carriers is of a public nature and under Tennessee law involves obligations to perform peculiar services for the shipping public of Tennessee. Likewise, these respondents cannot do so. "Congress drew no such dis-

tinction, but instead saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause . . ." **Amalgamated Association, etc., v. Wisconsin Employ. Rel. Bd.**, supra, at 391, 363.

IV.

The writs of certiorari should be granted, and the judgments of the Court of Appeals of Tennessee, reversed.

Respectfully submitted,

By .....

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Of Counsel.

Dated: ....., 1957.

Certificate of Service.

I, Albert Williams, one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of the United States hereby certify that a copy of the foregoing Memorandum Reply Brief and Appendix was this day served on adverse parties herein in accordance with Supreme Court Rules 21 (1) and 33 by depositing same in the U. S. Post Office at Nashville, Tennessee, with first class postage prepaid, addressed to counsel of record at their post office address as follows:

Waller, Davis & Lansden,
American Trust Building,
Nashville, Tennessee.

Albert Williams

Dated: Aug. 2, 1957.

APPENDIX "A."

Kerrigan.

"Felts, Judge: This is a suit by a shipper for an injunction to require common carriers to continue rendering their customary service to complainant, and to restrain a labor union and its officers and agents from interfering with any carrier or its employees in rendering such service."

". . . . The prayer was for a temporary injunction restraining defendant carriers from failing or refusing to provide their customary service to complainant, and restraining Local 327 and its officers and agents from interfering with such service; and that, on final hearing, such injunction be made permanent."

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"Felts, Judge: The principal case is an injunction suit by a shipper against 14 common carriers to compel them to continue rendering complainant their customary service, which they had stopped because their truck drivers refused to cross another union's picket line at complainant's plant. After a hearing the Chancellor granted a preliminary injunction, as prayed, which, following the practice in equity, ran against defendants 'and their officers, agents, and employees.' That case is still pending below.

"The phase of it now before us **is an ancillary proceeding against some of these employees, their union, and its officers for contempt for violating the injunction.**" (Emphasis supplied.)

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"Defendants Cook and Hoover were Tennessee corporations and common carriers engaged in transporting freight for hire by motor truck on the highways in this and in other states, under certificates of convenience and necessity issued by the Interstate Commerce Commission and by the Tennessee Public Service Commission. Defendant Local 327 was the union and the collective-bargaining representative of the truck driver and freight-handling employees of Cook, Hoover and other motor truck carriers with their principal places of business in Nashville."

"Defendants Cook and Hoover filed answers, each admitting its failure to render the service, but averring that this was because its employees refused to cross the picket line or to handle freight for complainant; and that each of them had a contract with Local 327 which permitted its employees to refuse to cross another union's picket line or to handle 'unfair goods.'"

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"Defendants are corporations and common carriers of freight by motor truck, operating under certificates of convenience and necessity from the Interstate Commerce Commission and from the Tennessee Public Service Commission. Their truck drivers and helpers are all members of Local 327, with which defendants have a collective bargaining contract which covers these employees and which contains the following provision:

"'It shall not be in violation of this contract if any employee or employees refuse to go through the picket line of a Union or refuse to handle "unfair goods." Nor shall the exercise of any rights permitted by law be violation of this contract.'"

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"On January 12, 1953, after a hearing, the Chancellor entered a decree overruling this plea and granting a temporary injunction, as prayed, enjoining Cook and Hoover 'from failing or refusing, while exercising the duties and privileges of a common carrier, to provide the customary carrier service to complainant • • •' and enjoining Local 327 and its officers and agents from interfering with any carrier or its employees in rendering such service."

Aladdin.

"On February 11, 1955, as before stated, the Chancellor granted a temporary injunction, as prayed, enjoining defendants 'and their officers, agents, employees, and confederates' from failing and refusing to provide customary service to complainant, under the legally established rates and rules applicable to such service, as the same had been rendered before February 3, 1955."

"Complainant then began filing petitions against the carriers, their employees, Local 327, its officers, and Local 5003 and its officers, for contempt for disobeying the injunction.

"The main charge in them was that Local 327, its officers, Local 5003, and its officers, entered into a conspiracy to violate the injunction and to induce the truck drivers to violate it by refusing to cross the picket line to render the service at the plant. . . ."

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"Local 327 and its officers and agents appealed and insist that the Chancery Court had no jurisdiction of the subject matter of the suit; that the carriers' employees were exempted by this contract from any duty to render service at the picketed plants; and that the injunction violates appellants' rights under the 13th and 14th Amendments to the Constitution of the United States."

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"The defense urged for them [Local 327 and its members] is twofold: (1) That the court had no jurisdiction of the case, the injunction was void, and they were not bound to obey it; but (2) that there is no sufficient proof that they did disobey it or were guilty of the contempt charged. They contend that the court had no jurisdiction of the subject matter of this suit, because it involved a 'labor dispute' within the exclusive jurisdiction of the National Labor Relations Board, or an administrative matter within the exclusive jurisdiction of the Interstate Commeree Commission or of the Tennessee Public Service Commission."

"**The subject matter of the suit is the controversy between the shipper and the carriers.** It does not involve any employer-employee relation or any labor dispute. It does not involve the dispute between complainant and its employees or seek to stop their picketing. **The only**

"The subject matter of a suit is, of course, the matter presented by the pleadings—the bill and the pleas and answers thereto. **The matter thus presented in this case is a controversy between a shipper and defaulting carriers.** It does not involve any employer-employee rela-

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conduct complained of is the conduct of the carriers in not rendering the service and the conduct of appellants in interfering to prevent such service." (Emphasis supplied.)

"That this conduct is unlawful cannot be denied. It violates the common law and the statutes of Tennessee, as averred in the bill and above set forth. Under the rule in equity and under our statute (TCA 65-1523), complainant

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tion or any labor dispute between the parties to the suit.

"There was no labor dispute between complainant and its employees. While there was a labor dispute between complainant's affiliate and the latter's employees, and while they were on strike and were picketing the plant, this suit did not involve that dispute or seek to interfere with the strike or to stop the picketing. **The only conduct complained of by the suit is the conduct of the carriers in not rendering their service, and the conduct of appellants in interfering to prevent each service.**" (Emphasis supplied.)

"That this conduct is unlawful cannot be denied. It violates both the common law and the statutes of Tennessee. At common law the calling of a common carrier is a public trust. The carrier and its employees owe a

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shipper is entitled to an injunction to compel the carriers to render the service, and to restrain appellants from interfering therewith. TCA 65-1523, 65-1524; Gibson's Suits in Chancery (4th ed.), sec. 804; Hogan v. Nashville Interurban Railway Co., 131 Tenn. 244, 174 S. W. 1118, LRA 1915E 788, Ann. Cas. 1916C 1162; Memphis News Publishing Co. v. Southern Ry. Co., 110 Tenn. 684, 75 S. W. 941, 63 LRA 150.

"Such is the general rule of equity in state and federal courts. **A shipper is entitled to an injunction to require a common carrier to perform its duty of carriage; and, according to equity practice, the injunction runs against the carriers' 'agents and employees,' as, of course, and without their being made parties to the suit.** (Emphasis supplied.) 2 Daniell's Chancery Pleading and Practice (6th Am. ed.) 1673; Gibson's Suits in Chancery (3rd ed.), sec. 834. . . ." (Emphasis supplied.)

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duty to serve all shippers alike and to receive, carry and deliver whatever kind of goods it holds itself out to carry, at the applicable rates; and our statutes declare this duty and make a violation of it a misdemeanor. TCA 65-422, 65-512, 65-514, 65-1523, 65-1524.

"Under the general rule of equity, and also under our statute (TCA 65-1523, 65-1524), **a shipper is entitled to an injunction to compel a common carrier to render service, and to restrain other persons from interfering with the rendering of such service.** Gibson's Suits in Chancery (4th ed.), sec. 804. . . .

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"Their argument is that the conduct here enjoined was either a 'concerted activity' protected by section 7 and section 13 of the Wagner and the Taft-Hartley Acts (29 USCA, secs. 157, 163), or a union 'unfair labor practice' under section 8 (b) (4) (A) (D) of that Act (29 USCA 158 (b) (4) (A) (D)), of which the exclusive jurisdiction was in the National Labor Relations Board; and that in either event, the state court had no jurisdiction to enjoin such conduct.

"Thus by section 7 employees have the right to join or assist labor unions, and to engage in other 'con-

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"This is also the general rule of equity in state and federal court. A shipper is entitled to an injunction to require the carrier to perform its duty of carriage, and **the injunction against the carrier also runs against his agents and employees, as a matter of course and without their being made parties to the suit.** . . . (Emphasis supplied.)

"The argument for appellants is that the conduct here enjoined was either a 'concerted activity' protected by section 7 and section 13 of the federal Acts (29 USCA, secs. 157, 163), or an 'unfair labor practice' prohibited by section 8 (b) (4) (A) (D); and that in either event the exclusive jurisdiction was in the National Labor Relations Board, and the state court had no power to enjoin such conduct.

"Thus by section 7 employees have a right to join or assist labor organizations, to bargain collectively

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certed activities' for collective bargaining or other mutual aid or protection; while section 13 provides that nothing in the Act, except as therein provided, shall be construed to interfere with 'the right to strike'; and section 8 (b) outlaws and defines certain union conduct as 'unfair labor practices.'	through their own chosen representatives, to engage in other 'concerted activities' for collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities; while section 13 provides that nothing in the Act, except as therein provided, shall be construed to interfere with 'the right to strike'; and section 8. (b) outlaws certain kinds of union conduct as 'unfair labor pratices.'
"1. When a suit upon a matter of labor relation is brought in a state court and the court's jurisdiction is denied, the court must determine the question for itself. It is true there is language in some of the cases to the effect that a state court has no authority to determine a question of unfair labor practice under the federal Acts and that it must be determined by the National Labor Relations Board. But it is of the essence of judicial duty that the court must decide the	"First. When such a suit as this is brought in a state court and the court's jurisdiction is denied upon a claim of exclusive federal jurisdiction, the court must determine the question for itself. It is true it is sometimes said that a state court has no authority to determine such a question but the matter must be determined by the National Labor Relations Board. But it is of the essence of judicial duty that the court must decide the case, including the question of its

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case, including the question of its own jurisdiction. It cannot stop and refer the question to the Board; nor will a federal court interfere to forestall the state court's determination. Amalgamated C. W. of A. v. Richman Bros.; supra."

"We come to the question whether the union conduct here is a 'concerted activity' under sections 7 and 13 so as to be protected from state power. This case does not involve any employer-employee relation or any labor dispute between the parties. **The only conduct involved is the refusal of the carriers and the employees to render the service and the only union claim is that of the right of its members to refuse to cross another union's picket line or to handle 'unfair goods,' or goods which have crossed or are destined to cross such picket lines.**

"This right of union members to refuse to cross another union's picket line is, of course, not as important as their right to refuse to

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own jurisdiction. It cannot stop or send the case to the Board; nor will a federal court interfere to forestall the state court's determination. Amalgamated C. W. of A. v. Richman Bros., supra."

"We come, then, to the question whether the conduct here enjoined is a 'concerted activity' under sections 7 and 13 so as to be protected from state power. As before stated, this case does not involve any employer-employee relation or any labor dispute between the parties to the suit. It is a controversy between complainant and the defaulting carriers. **The only conduct involved is the refusal of the carriers' truck drivers, members of Local 327, to cross the other union's picket line and render the service.**

"The right of members of a union to refuse to cross another union's picket line is, of course, not as important as their right to refuse

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cross their own picket line. In the latter case there is self-interest which justifies 'concerted activities' which would otherwise be illegal. This right to refuse to cross another union's picket line has been a potent weapon in Labor's fight for the gains it has made, and no true friend of Labor wishes to see this weapon weakened." (Emphasis supplied.)

"But this right to refuse to cross another union's picket line is not one of the basic, vital interests of Labor, such as the right of workers to self-organization; their right to collective bargaining by representatives of their own choosing; their right to strike in support of their demand for higher wages and better hours and working conditions; and their right to be engaged in peaceful picket-

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to cross their own picket line. This latter right is no less than part and parcel of the right to strike for a lawful purpose or the right to support a lawful strike. They may exercise this right even though they thereby inflict injury on the other party to the dispute. Their self-interest justifies 'concerted activity' which would be unlawful if done by persons without any unity of interest. Montgomery Ward & Co. v. Northern Pacific Term. Co., supra, 128 F. Supp. 504, 32 LRRM 2386." (Emphasis supplied.)

"The right to refuse to cross another union's picket line is an important right to Labor, but it is not one of the basic, vital interests of Labor, such as the right of workers to self-organization; their right to collective bargaining by representatives of their own choosing; their right to strike in support of their union demand for higher wages and better hours and working conditions; their

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ing to support a lawful strike.

"Since the **union conduct here** does not involve the right to strike, it would seem that section 13 does not protect such conduct; and since it does not involve the right to engage in peaceful picketing or any of the other vital rights of workers, it would seem not to be a 'concerted activity' within the protection of section 7. At least we have been able to find no Supreme Court decision holding that the right to refuse to cross another union's picket line is a 'concerted activity' protected by section 7." (Emphasis supplied.)

"It appears that the right of union employees to refuse to cross another union's picket line is not a federally protected right, but only a matter of contract, and the employer and employee are free to contract as they wish

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right to engage in peaceful picketing to support a lawful strike, all of which rights are protected by section 7.

"Since the **union conduct here** does not involve their right to strike, it would seem not to be within the protection of section 13, and since it does not involve the right to engage in peaceful picketing, or any of the other vital rights of workers, it would seem not to be a 'concerted activity' within section 7 so as to be protected from state power. At least we have been able to find no Supreme Court decision holding that the right to refuse to cross another union's picket line is a 'concerted activity' by section 7." (Emphasis supplied.)

"It appears that the right of union employees to refuse to cross another union's picket line is not a federally protected right, but only a matter of contract, and the employer and employee are free to contract as they wish

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about the matter. As we understand, it was so held in National L. R. Bd. v. Rockaway News Supply Co., 345 U. S. 71, 97 L. Ed. 832, 31 ALR 2d 511; 31 LRRM 2432. It was said:

" 'In the section by which the Labor Management Relations Act prescribes certain practices of labor organizations which shall be deemed unfair, there is a proviso that nothing therein "shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act • • •." This clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree. And nothing in the Act prevents their agreeing upon contrary

Aladdin.

about the matter. As we understand it, it was so held in National L. R. Bd. v. Rockaway News Supply Co., 345 U. S. 71, 97 L. Ed. 832, 31 ALR 2d 511, 31 LRRM 2432. It was said:

" 'In the section by which the Labor Management Relations Act prescribes certain practices of labor organizations which shall be deemed unfair, there is a proviso that nothing therein "shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act. • • •" This clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree. And nothing in the Act prevents their agreeing upon contrary

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provisions if they consider them appropriate to the particular kind of business involved.'

"But whatever may be the nature of this right not to cross another union's picket line, it is not beyond the reach of state power when it is employed for a purpose contrary to state law. Indeed, the more important right of picketing or to strike is not beyond state control when it is employed for purposes made unlawful by state law. International Union U. A. W. v. Wisconsin Employment Relations Board, 336 U. S. 245, 257, 93 L. Ed. 651, 664, 23 LRRM 2361, and cases there cited; Local Union No. 10 v. Graham, 345 U. S. 192, 97 L. Ed. 946, 32 LRRM 2577; United Constr. Workers v. Laburnum Constr. Corp., supra; United Auto A. & A. v. Wisconsin Employment Relations Board, supra; Montgomery Ward & Co. v. Northern Pacific Term. Co., supra, 128 F. Supp. 506, 509, 32 LRRM 2386.

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provisions if they consider them appropriate to the particular kind of business involved.'

"But whatever may be the nature of this right of union men to refuse to cross another union's picket line in general, it is not protected by section 7 when it is used to accomplish an object forbidden by state law. The 'concerted activity' protected by section 7 is lawful activity, not activity which violates the state law. Indeed, the more important right to picket or to strike is not beyond state power when exercised in a manner contrary to state law. International Union (Briggs-Stratton Case) v. Wisconsin Employment Relations Board, supra; Allen-Bradley Local v. Wisconsin Employment Relations Board, supra; Giboney v. Empire Storage and Ice Co., 336 U. S. 490, 93 L. Ed. 834, 23 LRRM 2505; Local Union No. 10 v. Graham, 345 U. S. 192, 97 L. Ed. 946, 31 LRRM 2444; United Constr. W. v.

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"Nor was the union conduct here, in our opinion, an 'unfair labor practice' under section 8 (b) of the federal Act so as to be beyond state power. It must be borne in mind that in this conduct, this union was not on a strike, not engaged in picketing, asserting any of the other basic rights of labor. As stated, **the conduct was only a refusal to cross another union's picket line, which was being maintained to support a lawful strike by the other union.**"

"So, we conclude that the conduct here enjoined was neither protected as a 'concerted activity' under sections 7 and 13 nor pro-

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Laburnum Construction Corp., supra; Auto Workers v. Wisconsin Employment Relations Board, ... U. S. ..., ..., ... L. Ed. ..., supra.

"The conduct here enjoined was not, in our opinion, an 'unfair labor practice' under section 8 (b) of the federal Act so as to be beyond state power. When this suit was brought and the injunction issued, Local Union No. 327 was not on a strike, not engaged in picketing complainant's plant, and not asserting any of the other basic rights of labor. **The only conduct enjoined was the conduct of the carriers and their truck drivers, members of Local 327, in refusing to render the service, which involved crossing another union's (Local 5003's), picket line which was being maintained to support a lawful strike by Local 5003.**"

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hibited as an 'unfair labor practice' under section 8 (b). Moreover, it does not appear that the federal Act affords any remedy for this conduct, or that the federal Board has any power to grant any relief to the shipper against those defaulting carriers and the unlawful conduct of appellants."	
"We think there is no merit in appellants' claim that the carriers' employees were exempted by their contract from the duty to render service at the picketed plants. This contract bound only the parties thereto. It did not affect the rights of third persons. **Such a contract cannot excuse defendant carriers and their employees from performing their public duty of carriage.** Memphis News Publishing Co. v. Southern Ry. Co., supra." (Emphasis supplied.)	"Appellants rely on the provision of the collective bargaining contract above quoted. That merely said it would not be a breach of the contract if an employee refused to go through the picket line of a union to handle 'unfair goods.' That contract could not bind third persons or affect the rights of the public. **Moreover, insofar as it attempted to relieve the carriers and their employees of their duty to the public, the contract would be illegal and void.** Memphis News Publishing Co. v. Southern Ry. Co., supra, 110 Tenn. 703, 705, 95 S. W. . . ." (Emphasis supplied.)